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APR 16 2004

OFFICE OF PETITIONS

In re Application of :
Chii-Chang Chen et al. :
Application No. 10/605,400 :
Filed: February 12, 2004 : DECISION ON PETITION
Attorney Docket No. :
11142-US-PA :
Title: BEAMSPLITTER UTILIZING A :
PERIODIC DIELECTRIC STRUCTURE :

This is a decision on the petition filed February 12, 2004, in which Petitioner requests the later filing date for the above-identified application.

On September 29, 2003, the above-identified application was deposited. On December 17, 2003, the Office of Initial Patent Examination (OIPE) mailed a "Notice of Omitted Item(s) in a Non-provisional Application - Filing Date Granted (notice)", advising applicant that Figures 1A-1D appeared to have been omitted. The Notice set a two-month period for response.

On February 12, 2004, Petitioner submitted a response, along with Figures 1A-1D and payment of the petition fee. Based on Petitioner's statement of the resolution which he seeks, it is clear that Petitioner accepts the date of deposit of the formerly omitted drawings as the filing date.

However, it is noted that Petitioner submitted this petition via facsimile transmission. As is set forth in 37 C.F.R. §1.6(d)(4) which has been reproduced below), drawings cannot be submitted via facsimile transmission.

37 C.F.R. §1.6 sets forth, in part:

- d) Facsimile transmission. Except in the cases enumerated below, correspondence, including authorizations to charge a deposit account, may be transmitted by facsimile. The receipt date accorded to the correspondence will be the date on which the complete transmission is received in the Patent and Trademark Office, unless that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. See § 1.6(a)(3). To facilitate proper processing, each transmission session should be limited to correspondence to be filed in a single application or other proceeding before the Patent and Trademark Office. The application number of a patent or trademark application, the control number of a reexamination proceeding, the interference number of an interference proceeding, the patent number of a patent, or the registration number of a trademark should be entered as a part of the sender's identification on a facsimile cover sheet. Facsimile transmissions are not permitted and, if submitted, will not be accorded a date of receipt in the following situations:
- (1) Correspondence as specified in § 1.4(e), requiring an original signature;
 - (2) Certified documents as specified in § 1.4(f);
 - (3) Correspondence which cannot receive the benefit of the certificate of mailing or transmission as specified in § 1.8(a)(2)(i)(A) through (D) and (F), § 1.8(a)(2)(ii)(A), and § 1.8(a)(2)(iii)(A), except that a continued prosecution application under § 1.53(d) may be transmitted to the Office by facsimile;
 - (4) Drawings submitted under §§ 1.81, 1.83 through 1.85, 1.152, 1.165, 1.174, 1.437, 2.51, 2.52, or 2.72;

§ 1.81 Drawings required in patent application.

- (a) The applicant for a patent is required to furnish a drawing of his or her invention where necessary for the understanding of the subject matter sought to be patented; this drawing, or a high quality copy thereof, must be filed with the application. Since corrections are the responsibility of the applicant, the original drawing(s) should be retained by the applicant for any necessary future correction.
- (b) Drawings may include illustrations which facilitate an understanding of the invention (for example, flowsheets in cases of processes, and diagrammatic views).
- (c) Whenever the nature of the subject matter sought to be patented admits of illustration by a drawing without its being necessary for the understanding of the subject matter and the applicant has not furnished such a drawing, the examiner will require its submission within a time period of not less than two months from the date of the sending of a notice thereof.
- (d) Drawings submitted after the filing date of the application may not be used to overcome any insufficiency of the specification due to lack of an enabling disclosure or otherwise inadequate disclosure therein, or to supplement the original disclosure thereof for the purpose of interpretation of the scope of any claim.

[43 FR 4015, Jan. 31, 1978; para. (a), 53 FR 47809, Nov. 28, 1988, effective Jan. 1, 1989]

(emphasis added)

As such, the petition must be **DISMISSED**.

Any response must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The response should include a cover letter entitled "Renewed Petition under 37 CFR 1.182."

The renewed petition may be submitted by mail¹ or hand-delivery.²

The renewed petition should display "Please deliver to Paul Shanoski, c/o Office of Petitions" in a prominent manner. Please note that the delivery process within the PTO can take as much as three weeks.

The application file will be retained in the Office of Petitions for two (2) months.

Telephone inquiries regarding this decision should be directed to the undersigned at (703) 305-0011.



**Paul Shanoski
Senior Attorney
Office of Petitions
United States Patent and Trademark Office**

¹ Mail Stop Petition, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA, 22313-1450.

² Customer Window, Mail Stop Petition, Crystal Plaza Two, Lobby, Room 1B03, Arlington, Virginia 22202.